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THE INDIAN CASE LAW FOR 1907.

We propose to deal in this article with the Indian case-law for the year that has closed, and in doing so, shall try to place before our readers a short *resumè* of the more important cases decided by the Privy Council and the several High Courts in India in the course of the year, indicating at the same time the advance made in the various branches of the law during the year and the trend which the judge-made law has taken, and is taking in various directions. We propose first of all to deal with the more important branches of the substantive law, and then to deal with the adjective law.

Hindu Law—Adoption:—Taking the Hindu Law first, we shall deal with the subject of adoption. The trend of decisions of late years has been to construe an authority for an adoption rather in a liberal spirit. This is borne out by the decisions of the Privy Council in *Suryanarayana* v. *Venkataramana*,[1] and the decisions in *Narasimha Appa Rao* v. *Rangayya Appa Row* [2] and *Mustaddi Lal* v. *Kundan Lal.*[3] The same course was adopted in the year under review by the Madras High Court in their decision in *Radha Rukhminammah* v. *Narasimha Row.* [4] It was held there that the consent of a sapinda given on the condition that the adopted son should not lay any claim to the family property, but should be content with the property he gets from his maternal grandfather, was a good and valid consent—*Srinivasa Aiyangar* v. *Rangasami Aiyangar.*[5] Their Lordships were of opinion that the condition did not amount to a bribe and so distinguished the case from *Rami Reddi* v. *Rangamma*[6] though the distinction

1 (1906) I.L.R. 29 M. 382 s.c. 33 I.A.145. 2. (1905) 16 M. L. J. 178 s.c. 29 M. 437
3. (1905) I.L.R. 28 A. 377 s. c.33 I.A.55. 4. (1907) 17 M. L. J. 186.
5. (1907) 17 M. L. J. 322 s. c. 30 M. 450. 6. (1900) 11 M. L. J. 20.

seems to be very subtle. It is an improvement upon the principle ennunciated by the Madras High Court in the Full Bench case of *Visalakshmi Ammal* v. *Sivaraman*,[1] *viz.*, that an agreement between the widow and the natural father of the adopted boy will be binding on the father if it is beneficial to the adopted son. Their Lordships of the Judicial Committee held in a judgment which affirmed that of the Madras High Court in *Venkamma* v *Subrahmania*[2] that a widow is bound to consult all the kinsmen of the nearest degree and not be content with a consultation of only some of them though they constitute a majority. She is not entitled to say that she did not consult any of them because she knew they would refuse consent. As to the right of the adopted son to set aside alienations made by the adoptive mother during the latter's lifetime and the period of limitation for the same, the decision of the Madras High Court in *Sriramalu* v. *Kristamma*[3] that the cause of action arises only on the death of the mother has been doubted by *Banerji* and *Aikman* JJ. in *Sahdeo Sing* v. *Ramanandan Singh.*[4]

Debt: —The Calcutta High Court has declined to follow the opinion of the Full Bench of the Madras High Court in *Venkatramanaya* v. *Venkatramana Doss*[5] that it is necessary that a father's mortgage debt should be "antecedent in character," in order that a mortgage decree may be passed as against the son's share— *Moheshwar Dutt Tewari* v. *Kishun Singh*;[6] *Kishun Pershad Chowdhry* v. *Tepan Pershad Singh.*[7] But on the question whether the principle laid down in *Luchman Dass* v. *Giridhar Chowdhry*[8] that a mortgagee from the father cannot get a mortgage decree against the son without proof of the binding character of the debt on the son is still the law, the Calcutta High Court is divided. In *Maheshwar Dutt Singh* v. *Kishun Singh*,[6] *Brett* and *Sharfuddin* JJ. held that the law laid down in *Luchmandass* v. *Giridhar Chowdhry*[8] has been varied by the Privy Council, while *Mukerjee* and *Holmwood* JJ. held in *Kishun Pershad Chowdhry* v. *Tepan Pershad Singh*[7] that the rule laid down in *Luchman Dass* v. *Giridhar Chowdhry*[8] had not been shaken by the later Privy Council

1. (1904) 14 M L. J. 310 s. c. 27 M. 577.
2. (1907) I.L.R. 30 M. 50 ; 34 I. A. 22.
3. (1902) I.L.R. 26 M 143
4. (1907) A. W. N. 148.
5. (1905) I. L. R. 29 M. 200.
6. (1907) I.L.R. 34 C. 184.
7. (1907) I.L.R. 34 C. 735
8. (1880) I.L.R. 5 C. 855.

decisions in *Nanomi Babusin* v. *Modun Mohun* and *Bhagbut Pershad Singh* v. *Girja Koer*[1] and that the mortgagee cannot get a mortgage decree against the son's share without proof of the binding character of the debt on the son. Their Lordships recognize that there is an essential difference between the position of a son in the suit by the mortgagee and that in which he would be if he were to attack an execution sale after it is completed by means of a fresh suit, and further point out that the Privy Council in *Girdharee Lal* v. *Kantoo Lal* [2] expressly limit their observations to cases of conveyances executed by the father for an antecedent debt and executions sales, and that the extension of the principle to partial conveyances such as mortgages by *Brett* and *Sharfuddin* JJ. in *Maheswar Dutt* v. *Kishun Singh*[3] was not warranted. The only other matter in this branch of the law, where there has been a real difference of opinion is the question whether the marriage expenses of a male member of a joint family is a family purpose so as to justify an alienation of family property. The Bombay High Court has taken, perhaps, the more correct view in laying down in *Sundrabai* v. *Shiv Narayan* [4] that it is a family purpose, differing from the view of the Madras High Court in *Govindarajulu* v. *Devara Bhotla Venkatanarasiah.* [5] Their Lordships of the Bombay High Court proceed on the footing that marriage is one of the "*samskaras*" to be necessarily performed to every Hindu. This is certainly more in consonance with Hindu notions than the decision of the Madras High Court in *Sundari Ammal* v. *Subrahmanya Aiyar* [6] where it was laid down that a Hindu father is under no obligation to give his daughter in marriage.

Gift:—A Hindu father has been held entitled to make gifts by way of marriage portions to his daughters out of the family property *to a reasonable extent*; and so a managing member too—*Kudutamma* v. *Narasimha Charyulu.* [7] The tendency of recent decisions has been to make a distinction between a devise to a widow and a devise to a woman other than a widow, as to the estate conferred—see *Nanjamma* v. *Nacharammal*[8]. But the recent

1. (1885) 13 C. 21 ; 13 I. A. 1.
2. (1888) I. L. R. 15 C. 717 s.c. L. R. 15 I A. 99.
3. (1874) L.R. 1 I. A. 3 , 140 L.R. 157
4. (1907) 9 Bom. L. R. 1366.
5. (1903) I. L. R. 27 M. 206.
6. (1902) 26 M. 505.
7. (1907) 17 M. L. J. 528.
8. (1907) 17 M. L. J. 622.

decision of the Privy Council has placed gifts and devises to women on a better footing than the one at which they have hitherto been viewed generally by the Courts in India. Their Lordships have held that the word "malik" indicates absolute ownership, and the fact that the donee is a woman and a widow is not sufficient to displace the presumption raised by the word—*Mussamat Surajmani* v. *Rabi Nath Ojha.*[1] The same view was adopted by the Allahabad High Court in *Padam Lal* v. *Tek Singh.*[2]

Joint Family :—The Calcutta High Court has followed the decision of the Full Bench of the Madras High Court in *Karuppi Nachiar* v. *Sankaranarayan Chetty*[3] that nephews inheriting a maternal uncle's property take only as tenants in common and not as joint tenants—*Harihar Pershad* v. *Bholi Pershad.*[4] The distinction made out in the Madras case between property inherited from a maternal or paternal ancestor in the direct line and that inherited from a person like the uncle is approved and followed by the Calcutta High Court in the said case. But the Allahabad Court has held in *Jamna Prasad* v. *Ram Partap*[5] that a son does not acquire by birth an interest jointly with his father in property inherited by the latter from his maternal grandfather. Their Lordships differ from the Madras High Court (see *Vythinatha Ayyar* v. *Yeggia Narayan Ayyar*[6]) in this respect and explain away the use of the term "ancestral property" by the Privy Council in *Venkayyamma Garu* v. *Venkataramanayamma*[7] as in no way meant to be used in the limited sense in which they are used in the Mitakshara, namely, property in which the sons acquire by birth a joint interest with the father.

Partition :—There are a number of decisions bearing upon the question as to what constitutes partible property. It has been already mentioned in another connection that property inherited from a maternal grandfather has been held the self-acquired property of the father. Property devised to the sons by their father is also self-acquired—see *Parsottam Rao* v. *Janki Bai*[8] where the Allahabad High Court differs from the view taken by the Madras

1. (1907) 18 M. L. J. 7.
2. (1907) I. L. R. 29 A. 217.
3. (1903) I. L. R. 27 M. 300.
4. (1907) 6 C. L. J. 383.
5. (1907) I. L. R. 29 A. 667.
6. (1903) I. L. R. 27 M. 482.
7. (1902) I. L. R. 25 M. 687.
8. (1907) A. W. N. 77 ; 4 A. L. J. 257.

High Court in *Tarachand* v. *Reeb Ram.*[1] Money received by a member of a joint family at marriage was held to be separate property—*Adhur Chunder Chatterjee* v. *Nobin Chendra Chatterjee.*[2] There has been more than one decision of the Privy Council on the question of onus where nucleus is proved to have existed—*Anandarao* v. *Vasantarao*[3]; *Lalbahadur* v. *Kanhaiya Lal.*[4]

Inheritance:—The Bombay High Court held that an unmarried but prostitute daughter is not a "maiden" daughter and takes only in the absence of married daughters—*Tara* v. *Krishna.*[5] It was held by a single judge in Calcutta (*Fletcher* J.) that a woman who is a Hindu by birth does not lose her caste by reason of her living the life of a prostitute and succession to her property is governed by the Hindu Law. The same view was taken in *Narain Das* v. *Trailok Tiwari.*[6] where a husband of a degraded woman was held to be the heir to her property—*Sundari Dossee* v. *Nemye Charan Daw.*[7] In Madras it was held that the existence of a divided son would not preclude the grandson by another son inheriting to a share of the grandfather's assets, and the question whether the grandson separated from his own father and his grandfather will take a share even if his father be alive was left open—*Marudayi* v. *Doraisami.*[8]

Widow :—A Hindu widow does not get more powers than she possesses as a widow by being appointed administratrix— *Vinayakrao* v. *Vidya Shankar.*[9] The Privy Council has enlarged the binding character of a widow's alienation on the reversion, by laying down that an alienation with the consent of all the reversioners of the nearest degree will be good. They have laid down that the consent of the whole body of persons constituting the immediate reversioners at the time should be obtained, though perhaps in certain circumstances the rule might be varied. A consent given after the transaction was also held sufficient—*Bajranji Singh* v. *Monokarmik Baksh Singh.*[10] The Calcutta High Court held in two cases that necessity even for the rate of interest if it happens to be exorbitant, should be proved, even though the necessity for the loan itself

1. (1886) 3 M. H. C. R. 50 at 55
2. (1907) 12 C. W. N. 103.
3. (1907) 17 M. L. J. 184.
4. (1907) I.L.R. 29 A. 244 ; 34 I. A. 65.
5. (1907) I.L.R. 31 B. 495.
6. (1907) 6 C. L. J. 372.
7. (1906) I.L.R. 29 A. 4.
8. (1907) I.L.R. 30 M. 348.
9. (1907) 9 Bom. L. R. 404.
10. (1907) 17 M. L. J. 605.

is established—*Harmanoje Narain Singh* v. *Ramprosad Singh*[1]; *Roy Radha Kissen* v. *Nouratan Lall.*[2] There has been a conflict of decisions of late as to the binding character of an *ex parte* or compromise decree obtained against a widow, on the reversion. The Madras High Court has held that a widow is not bound to contest any and every claim even though she be satisfied that it is a good claim, and that a decree obtained against her is binding on the estate she represents in the absence of fraud or collusion—*Subbammal* v. *Avudaiammal*;[3] *Lakshminarayanasastri* v. *Venkayya.*[4] But the Allahabad and the Calcutta Courts have held that a compromise decree or a decree passed on an award is not binding on the reversion—*Ram Sarup* v *Ram Dei*;[5] *Gobind Krishna Narain* v. *Khuni Lal*[6]; see, however, *Anandi* v. *Mahadei.*[7] A surrender by a widow subject to conditions of maintenance, etc., has been again held by the Madras and the Allahabad High Courts not valid—*Sriramalu Naidu* v. *Andalammal*;[8] *Rajkishore* v. *Durgacharan.*[9] Co-widows have been held entitled to partition by the Bombay High Court—*Hari* v. *Vital.*[10] The Madras High Court had occasion to distinguish a widow's estate from a mere life estate in connection with property devised by a Hindu to his mother and to define her powers of alienation over the same for the discharge of a debt incurred by the male owner —the son himself—and their Lordships held that she took not a widow's estate, but only a life estate and that she or her donees were not competent to convey more than her own life interest, even though the alienation be for a purpose binding on the reversion—*Nanjamma* v. *Nacharammal.*[11]

Wills:—Mr. Justice *Subrahmanya Aiyar* made a strikingly bold departure in laying down that a bequest for "dharmam" was not void for uncertainty. He proceeded on a learned and detailed examination of the authorities upon the view that the word "dharmam" indicated certain prescribed classes of pious gifts and was not a mere vague and uncertain expression. The learned judge held

1. (1907) 6 C. L. J. 462.
2. (1907) 6 C. L. J. 491.
3. (1906) I.L.R. 30 M. 3.
4. (1907) 17 M. L. J. 160.
5. (1907) 4 A. L. J. 160.
6. 1907 A. W. N. 151.
7. 1907 A. W. N. 199; 4 A. L. J. 490.
8. (1906) I.L.R. 30 M. 145; 17 M. L. J. 14.
9. (1906) I.L.R. 29 A. 71.
10. (1907) I.L.R. 31 B. 560.
11. (1907) 17 M. L. J. 622.

that the decision of the Privy Council in *Runchordas* v. *Parvatibai*[1] did not preclude the applicability of his view to the Southern Presidency, there being no course of decisions in that part of the country, unlike as in Bombay and Bengal, to force him to hold the contrary. Equally marked and bold was his view with regard to the revocation of a Hindu will by the birth of a posthumous son to the testator. But the view was not upheld in appeal under the Letters Patent, the appellate Bench being of opinion that S. 57 of the Succession Act read with S. 3 of the Hindu Wills Act was exhaustive of all cases of revocation—*Subba Reddi* v. *Dorasami Bathen.*[2]

Mahomedan Law:—We shall now proceed to deal with cases bearing upon the Mahomedan Law. The Privy Council held in *Ibrahim Gulam Ariff* v. *Saiboo*[3] that the application of the doctrine of *musha* should be confined within the strictest limits and that it cannot be applied to company shares and freehold property in great commercial towns like Rangoon. Their Lordships of the Madras High Court held in *Vahazull Sahib* v. *Nagiah*,[4] differing from the view of *Benson* J. in *Alabi Koya* v. *Mussa Kaya*,[5] that registration of a deed of gift does not make delivery unnecessary. The Privy Council held in *Shahoo Banoo* v. *Agha Mahomed Jaffer Bindaneem*[6] that there is no legal prohibition for a woman being a *muttawalli*, when the office involves no spiritual duties such as a woman could not properly discharge in person or by deputy. A sale by a mother as *de facto* guardian of a minor was held by the Madras High Court not binding on the minor—*Durgozi Row* v. *Fakeer Sahib*,[7] but the Calcutta High Court held that a sale by the mother for the maintenance of the minor and other necessary purposes is binding on the minor—*Mafaizzula Hosain* v. *Basid Shiekh.*[8] A Mahomedan widow was held to be in the position of a mortgagee of her husband's esate in respect of her unpaid dower —*Banoo Begum* v. *Mir Aun Ali*;[9] *Muzaffar Ali Khan* v. *Parbati.*[10] and in respect of a dower deferred, *i.e.*, when the dower is made payable only upon dissolution of marriage either by divorce or death, the cause of action in the case of the death of the wife

1. (1899) I. L. R. 26 I. A 71, I.L.R. 23 C 275.
2. (1907) I.L.R. 30 M. 369 s.c. 17 M. L. J. 269.
3. (1907) I.L.R. 34 I. A. 167.
4. (1907) 17 M. L. J. 562. S. C. 30 M. 519.
5. (1901) I L.R. 24 M. 513.
6. (1907) I. L. R. 34 C. 118; L.R. 31 I. A. 46.
7. (1906) 17 M. L. J. 10; I. L. R. 30 M. 197.
8. (1906) I.L.R. 34 C. 36.
9. 9 Bom. L. R. 188.
10. (1907) I.L.R. 29 A. 640.

was held to arise only on her death—*Mahomed Ishaq* v. *Sheikh Akramul Huq.*[1] It was held in Bombay that shares in limited companies cannot be the subject of wakf—per *Russell* J. in *Bai Fatonabai* v. *Gulam Husen.*[2]

Jains:—The Allahabad High Court held that among Jains a widow can adopt a son without special authority, and that a married man may be adopted—*Manohar Lal* v. *Banarsi Das.*[3]

Contracts:—In the law of Contracts, there are a few instructive decisions on the question of undue influence. A specially instructive one is to be found in *Ganesh Narayan* v. *Vishnu Ramachandra.*[4] Urgent need of money is not in itself sufficient to place the lender "in a position to dominate the will of the borrower"—see the Privy Council judgment in *Rani Sunder Koer* v. *Rai Sham Kishen*[5] and the judgment of the Bombay High Court in *Gangh Narayan* v. *Vishnu Ramachandra* (*supra*). The Allahabad High Court held, in *Balkishan Das* v. *Madan Lal,*[6] that though a contract may not be said to have been procured by undue influence, yet if it is unconscionable, a Court may well relieve the party therefrom—see also *Poma Dangra* v. *William Gillespie.*[7] Mr. Justice *Subrahmanya Aiyar* held that a promise to pay money in order to procure resignation of an office by the promisee with a view to the promisor securing the appointment was not an enforceable promise, the consideration being unlawful—*Saminathaiyar* v. *Muthuswami Pillai.*[8] The question as to what is a wager and when dealings in stocks will partake of the character of a wager is very elaborately gone into and the principles laid down by *Davar* J. in *Hurmukhrai* v. *Narotam.*[9] Two interesting decisions as to when time is to be inferred to be the essence of the contract are to be found in *Harakh Singh* v. *Saheb Singh*[10] and *Ikramul Huq* v. *Wilkie,*[11] the latter being a Privy Council decision. The Madras High Court held that in order to constitute a "payment" within the meaning of S. 69, payment should be from one man to another and that the Government as a tenant paying itself the revenue to save the lands from sale

1. (1907) 12 C. W. N. 84 : 6 C. L. J. 558.
2. (1907) 9 Bom. L. R. 1337.
3. (1907) I.L.R. 29 A. 495.
4. (1907) 9 Bom L. R. 1164.
5. (1906) I.L.R. 34 C. 150 ; 34 I. A. 99.
6. (1907) I.L.R. 29 A. 303.
7. (1907) I.L.R. 31 B. 348.
8. (1907) I.L.R. 30 M. 530.
9. (1907) 9 Bom. L. R. 125.
10. (1907) 6 C. L. J. 176.
11. (1907) 17 M. L. J. 287.

cannot entitle it to recover the amount from the mulgar. There have been a few interesting decisions as to when a person may be held to be "bound" to pay within the meaning of S. 69. A person whose property is sold wrongfully in execution of a decree against another and who deposits the decree amount under S. 310 *A* was held not entitled to recover—*Kunja Behari Singh* v. *Bhupendra Kumar Dutt.* [1] The Calcutta High Court held in *Ganga Das Bhatter* v. *Jogendra Nath Mitter*[2] that a prior mortgagee was not bound in law to pay the Government revenue. The Privy Council held that compound interest at an enhanced rate may well be considered a penalty, in *Rani Sundar Koer* v. *Rai Shan Kishen.* [3]

It was held in *Sumer Chand* v. *Ardeshir* [4] that when a person purchases goods by sample, if the goods do not answer the sample, it will do to give clear notice that the goods are accepted and remain at the risk of the seller without actually returning them. A family firm was held not to be a partnership within the meaning of S. 239 (per *Russell* J.) in *Haji Noor Mahomed* v. *Macleod.*[5]

Landlord and Tenant :—There were very few decisions of any importance on the subject of Landlord and Tenant during the year under review. In *Abdulla Naiha* v. *Moidin Kutti*[6] a defendant in a suit in ejectment who denied plaintiff's title and the tenancy was held not entitled to plead want of notice to quit. This is contrary to several decisions of both the Madras and the Calcutta High Courts wherein it has been held that a denial of tenancy in a written statement will not entail a forfeiture—see the cases collected in the report itself at page 287 of 17 M. L.J. The case itself has been subsequently dissented from by the Madras High Court. There have been three or four cases wherein under the circumstances of the case the judges held that an occupancy right was proved—see notably the Privy Council judgment in *Nabakumari Debi* v. *Behari Lal Sen.*[7] A Bench of the Madras High Court held in *Marapu Tharalu* v. *Tenkula Neelakanta Behara*[8] that the

1. 12 C. W. N. 150. 2. (1907) 11 C. W. N. 403 S. C. ; 5 C. L. J. 315.
3. (1906) I.L.R. 34. C. 150 ; 34 I. A. 9.
4. (1907) A. W. N. 67. ; 4. A. J. 245. 5. (1907) 9 Bom. L. R. 274.
6. (1907) 17 M. L. J. 287.
7 (1907) L. R. 34 C. 902 , L. R. 34 I. A. 160.
8. (1907) I.L.R. 30 M. 50.

presumption of occupacy right did not hold good in the case of an inamdar and a ryot; but in later unreported cases their Lordships have shown a disinclination to follow the case and have tried to get round that case by saying that in *Marapu Tharala* v. *Tenkula Neelakanta Behara*[1] it was not intended to lay down any general rule and that the expression of opinion in the case should be confined to the facts of that particular case. To the list of cases laying down that mere non-payment of rent does not affect the landlord's right to rent may be added the case of *Bama Charan Chowdhry* v. *Administrator-General of Bengal.*[2]

On the question of the relative rights of landlords and tenants on the trees in the holding, we find two cases, one from Calcutta which holds that the tenant has no right—*Sitab Rai* v. *Dubal Negesia*[3]—and the other, to the contrary, in *Badam* v. *Ganga Dei.*[4]

Mortgage—Construction:—There were two or three cases bearing on the question of construction of mortgage deeds. Where no time was fixed for payment, the Madras High Court held that the mortgagee was liable to be redeemed at any time after the date of the bond and that notice was unnecessary—*Chengiah* v. *Pichayya.*[5] This rule is different from the English law on the point where the mortgagee is entitled to 6 months' notice. The Transfer of Property Act does not contain any provision analogous to that of the English law. Again the same Court held in *Rangasami Nadan* v. *Subbaraya Iyen*[6] that an undertaking by the mortgagor to redeem the property on payment of more than one debt due by him does not restrict the right of the mortgagee to sue for sale until the mortgagor chooses to redeem. The Calcutta High Court held in *Bhugwan Das Marwari* v. *Parameswari Prasad*[7] that in the absence of express reservation, a personal covenant is always to be implied in a mortgage transaction.

Contribution:—The Calcutta High Court has contributed a lucid judgment on this head of the law in *Jugdeo Singh* v. *Habibullah Khan.*[8]

Substitution:—Property mortgaged by a person when he had no title to it becomes in truth the mortgage security if after the

1. (1907) I. L. R. 30. M. 50.
2. (1907) 6 C. L J. 72.
3. (1907) 6 C. L. J. 218.
4. (1907) I. L. R 29 A. 484.
5. (1907) 17 M. L. J. 177.
6. (1907) I. L. R. 30 M. 408. s.c.; 17 M.L. J. 403.
7. (1896) 5 C. L. J. 287.
8. (1907) 6 C. L. J. 612.

execution of the mortgage the mortgagor acquires title to the property. This is in accordance with the principle of equity enunciated in S. 41, Transfer of Property Act—*Gaya Din* v. *Kashi Gir.*[1]

Priority:—When two mortgages are executed on the same date, that which was executed first takes priority and evidence may be given to ascertain which was executed first. If the matter cannot be ascertained both the mortgagees take as joint tenants or tenants in common—*Ram Ratan Sahu* v. *Bishen Chand.*[2] As between liens created in order to preserve the property, the later in date obtains priority—*Giridhari Lal Roy* v. *Dhirendrakristo Mukerjee.*

Relinquishment of Security:—The Calcutta High Court has dissented from the ruling of the Madras High Court in *Krishna Ayyar* v. *Muthukumarsawmia*[4] to the effect that a mortgagee can proceed against any part of the security, relinquishing the remainder and that the remedy of the sufferer is only by way of contribution. The Calcutta High Court holds that a mortgagee cannot release his lien upon one item so as to increase the burden upon the others and that the purchasers of the properties not released are entitled to insist that no more than a proportionate share of the mortgage debt shall be levied upon the properties in their hands—*Hakim Lal* v. *Ram Lal.*[5]

Subrogation: —The principles of subrogation and the circumstances under which the law implies it are well laid down in two learned and exhaustive judgments of the Calcutta High Court in *Surdeo Singh* v. *Chandrika Singh*[6] and *Bisseswar Prasad* v. *Lala Sarnam Singh*[7] and they are a real contribution to the law on the subject. A person who purchases the equity of redemption and pays the consideration money in payment of a prior mortgage is not entitled to set up the first mortgage as a shield—*Baijnath Murlidhar.*[8]

Tender: The effect of tender has been very fully dealt with by Mr. Justice *Mukerjee* in a very learned judgment in *Satyabadi Behara* v. *Mussamutt Hirabati*[9] and his Lordship deals

1. (1901) I. L. R. 29 A. 168.
2. (1907) 11 C.W.N. 782 ; 6 C.L.J. 74.
3. (1906) I. L. R. 34 C. 427.
4. (1905) I. L. R. 29 M. 217.
5. (1907) 6 C. L. J. 46.
6. (1907) 5 C. L. J. 611.
7. (1907) 6 C. L. J. 134.
8. (1907) A. W. N. 85 ; 4 A. L. J. 849.
9. (1907) I. L. R. 34 C. 223.

with the effect of tender as it obtains in the various systems of law and lays down that on a due tender being made, interest will cease to run only if the mortgagor keeps the money always ready for payment without making any use of it, and also holds that tender has not the effect of converting the mortgagee in possession into a trespasser. The mortgagee is only liable for the gross profits, and he may render himself liable for costs in a redemption suit.

Mortgage Suits and Decrees:—As regards mortgage suits, the principle that the rights of persons not impleaded therein are not affected by the result of the litigation is again laid down in two or three cases and the principle applied to the several circumstances that arose in the particular instances.

The Privy Council has at last set at rest the conflict as to the rate of interest liable to be charged on the amount due under a mortgage after the date fixed in the decree for payment. Their Lordships lay down that after the day fixed for payment, the relationship between the mortgagor and mortgagee ceases as such, that interest should be charged only at the Court rate and not at the contract rate, and that the Court rate should be charged on the aggregate amount found due on the day fixed for payment.

There have been a few decisions on the question whether a person holding two mortgages can first bring a suit on the first mortgage for sale and subsequently bring a suit on the second. Both the Madras and the Allahabad Courts have held that he cannot—*Krishnamachariar* v. *Anangarachariar*;[1] *Godh Shukul* v. *Sakla Kunwar*[2]—though it may be open to the mortgagee to proceed in respect of his second mortgage on the surplus sale proceeds—*Krishnamachariar* v. *Anangarachariar*.[1] But where a person holds a usufructuary first mortgage and over the same property holds a second mortgage which entitles him to sue for sale, the mortgagee can ask for sale free of the prior usufructuary mortgage and the money should be applied in satisfaction of the plaintiff's mortgages, in the order of their priority—*Rangasami Nadan* v. *Subbaraya Iyen*.[3] To these should be added two decisions of the Judicial Committee which will find a place in the digests under the heading of mortgages, though both of them

1. (1907) I. L. R. 30 M. 358. 2. (1907) 4 A. L. J. 253.
3. (1907) I. L. R. 30 M. 408.

relate to estoppel. The Privy Council has held that with respect to a power of sale conferred on a mortgagee, if the mortgagor undertakes not to raise any objection to the purchaser's title on the ground of any irregularity in the sale, that covenant can only apply to a *bona fide* sale, and that the mortgagor will not be estopped from raising any objection to the sale on the ground of fraud—*Lalubhai* v. *Mowji*.[1] The other case is that there is nothing illegal in a mortgagee covenanting to deduct out of the consideration a portion as commission, and that a mortgagor who knowingly admitted receipt of the full consideration cannot, years after the transaction, be allowed to charge his lender with the money he agreed to have deducted as commission; nor can the lender be charged with money paid by the borrower in the nature of douceurs or bribes to persons who were supposed to have influence with the lender for the purpose of securing the loan.

Negotiable Instruments:—In this branch of the law, there was a great change effected by the Madras High Court by reason of the Full Bench decision in *Narayana* v. *Ramasami Aiyar*.[2] By this decision of the Full Bench all the previously existing notions as to the right of a real owner to sue on a negotiable instrument, the right of a defendant to plead payment to the real owner in bar of a suit by the holder of the instrument, and the disability, pronounced by some decisions, of a benamidar-holder to sue on a bill have been varied. It lays down (1) that only the holder of the instrument can sue and not the person who claims to be the real payee; (2) that it is not open to a defendant to plead discharge by payment to the real owner; (3) and that an undisclosed principal cannot be sued on a negotiable instrument. The decision overrules *Bojjamma* v. *Venkatramayya*[3] and *Ganapathy Nayakar* v. *Saminadha Pillai*.[4] Another important decision was passed by the Madras High Court in *Subrahmanian Chetty* v. *Alagappa Chetty*[5] defining the effect of an indorsement for collection and the position of the parties thereon. The learned judges held that an endorsement for collection, though it puts the indorsee in a position to pass title to a subsequent holder in due course, does not pass the property in the

1. (1907) L. R. 34 I. A. 179; I. L. R. 31 B. 566

2. (1906) I. L. R. 30 M. 88.

3. (1897) I. L. R. 21 M. 80.

4. (1896) 7 M. L. J. 64.

5. (1906) I. L. R. 30 M. 268.

bill to him (the indorsee) and that the indorser can, on return of the bill, strike out the name of the indorsee for collection and constitute himself the holder thereof. The Privy Council laid down in *Ghanshiam Lalji* v. *Ram Narain* [1] the scope of S. 80 of the Negotiable Instruments Act. The section, their Lordships lay down, does not curtail the freedom of contract possessed by the parties or take away a right to interest otherwise existing. In the case itself there was a collateral agreement to pay interest at 30 per cent., the note itself being silent on the point. Their Lordships held that the agreement was enforceable and S. 80 had nothing to do with it.

NOTES OF INDIAN CASES.

Emperor *v.* **Mahendra Singh.**—I. L. R. 30 A. 47.—We are unable to accept the view that proceedings under S. 110 of the Code of Criminal Procedure cannot be transferred to any Court outside the District within which such proceedings have been lawfully instituted. The learned Judges admit that the point is open to argument, but they feel bound by two prior rulings of the same Court.

One of them (*In the Matter of the Petition of Gudar Singh*[2]) appears to us to have no bearing on the present question. That case did not raise the question of the propriety of a transfer from one district to another. The Court was unable to make an order of transfer because the Magistrate had 'acted' within the meaning of S. 117. It is, however, noteworthy that the learned Chief Justice (Sir *John Edge*) did not deem himself powerless to prevent an apprehended injustice and rest content with a pious hope that the Magistrate might, nevertheless, act with judicial fairness. He quashed the proceedings, without prejudice, of course, to fresh proceedings being taken by any *other* Magistrate.

The other case (*In the Matter of the Petition of Amar Singh*[3]) is, no doubt, an authority in point. It is, however, a decision of a single Judge, given under the Code of 1882, in which the provisions of Ch. VIII were materially different [for instance compare *In re Krishnaji: P. Joglekar* [4] and the cases there cited with

1. (1906) I. L. R. 29 A. 33 ; 34 I A. 6.
2. (1897) I. L. R. 19 A. 291.
3. (1897) I. L. R. 16 A. 9.
4. (1898) I. L. R. 23 B. 32.

Cl. (2) of S. 107 of the Code of 1898]. The argument of the learned Judge is by no means convincing. It is not confined to S. 110, but applies generally to all proceedings under Ch. VIII. We cannot see whence the idea of restricting the proceedings to the limits of the *District* is derived. The learned Judge lays stress on the words 'within the local limits of his jurisdiction' but the logical result of this reasoning must be to prohibit any transfer, even within the same District, from one Magistrate to another, but see *Chintamon Singh v. The Emperor.*[1] It is stated that 'a Magistrate of another district to whom the case might be transferred would not be competent to arrive at the finding required before the order to give security could be made absolute.' There is nothing in S. 118 to warrant this view. No doubt Ss. 107, 108, 109, and 110 lay down certain rules as to 'local jurisdiction,' but these as much as the rules contained in Ss. 177 to 188 of the Code, relate only to the initiation and conduct of proceedings in the ordinary course and do not affect the right of transfer. Proceedings under S. 110 can be taken by a Magistrate only against persons *residing* within the local limits of his jurisdiction—*Ketaboi* v. *Queen Empress*[2]—and there can be no transfer from a Court that has taken cognisance of a case without jurisdiction—*Girdhar Lal* v. *Motilal.*[3] But once the proceedings have been instituted in the proper Court, there is nothing that we can see in Ch. VIII to negative the power of the High Court under S. 526 or under the Charter Act or the Letters Patent—*Lolit Mohan* v. *Surja Kanta* ; [4] *In re Arumuga Tegundan*[5]—to make an order of transfer when it is necessary in the ends of justice. It is no doubt ordinarily true, as pointed out in *Ketaboi* v. *Queen Empress* (*supra*) that a trial held in another District and at some distance from the residence of the accused would probably result in his being unable to obtain the attendance of his witnesses. But this can give rise to no *legal* prohibition, though a very important factor in determining the expediency of a transfer. (*Cf.—The Legal Remembrancer* v. *Bhairub Chunder Chuckerbutty.*[6]) If the circumstances of a case require a transfer, the High Court can select the Court to which the case is to be transferred, without any reference to the arbitrary division of *Districts.*

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1. (1907) I. L. R. 35 C. at p. 256.
2. (1900) I. L. R. 27 C. 993.
3. (1901) 3 Bom. L. R. 121.
4. (1901) I. L. R. 28 C. 709.
5. (1902) I. L. R. 26 M. 188.
6. (1897) I. L. R. 25 C. 727.

Thus in *Gopinath Paryah* v. *The Empress* [1] a case under S. 145 was transferred from one District to another, and in the unreported case of *Ahmed Hussain*[2] the Calcutta High Court appears to have ordered a similar transfer of a case under S. 110 overruling the objection based on *Amar Singh's case*.[3]

Lohre v. Deo Hans.—I. L. R. 30 A. 48.—The question as to the power of an appellate Court to grant relief to a *Respondent* even in the absence of a memorandum of objections has frequently been raised before the Indian Courts and generally decided in the negative. The point was discussed at some length in *Kulaikada Pillai* v. *Viswanatha Pillai*.[4] The Full Bench decision of the Calcutta High Court in *Rup Jan Bibee* v. *Abdul Kader*[5] which, however, affirmed such power, cannot, we think, be properly regarded as confined to suits for contribution as was suggested by Sir *Arnold White* C. J. in *Kulaikada Pillai* v. *Viswanatha Pillai* [4]; for *Hudson* v. *Basdeo Bajpye* [6] referred to by Sir *F. Maclean* C. J. without disapproval was not a case of contribution. In *Farzand Ali Khan* v. *Bismillah Begam*[7] the Allahabad High Court refused to follow the Calcutta Full Bench Ruling and in the case now under notice, the learned Judges adhere to the view taken in *Farzand Ali Khan's case*.[7]

Under the language of the present Code the question is indeed one of considerable difficulty. In *Krishna Aiyangar* v. *Appanaiyangar*[8] Justice *Miller* expressed it as his opinion that under S. 25 of the Provincial Small Cause Courts Act, the High Court can, when all the parties are before it "transfer the liability from one defendant to another even without application by the plaintiff." But it must be admitted that the language of that section is much wider than that of the sections of the Code relating to the powers of an appellate Court. When noticing the Calcutta Full Bench ruling, we expressed a hope that in the new Code 'powers will be conferred on the appellate Court similar to those of the Court of Appeal in England to enable it to do complete justice' (14 M. L. J. at p. 246.) We are glad to find that the new Code has reproduced in Order XLI, rule 33, the

1. (1905) 10 C. W. N. 83 S. C. 2. C. L. J. 555.
2. (1901) I. L. R. 28 C. at p. 715.
3. (1893) I. L. R. 16 A. 9.
4. (1904) I. L. R. 28 M. 229.
5. (1904) I. L. R. 31 C. 643.
6. (1898) I. L. R. 26 C. 109.
7. (1904) I. L. R. 27 A. 23.
8. (1906) 17 M. L. J. R. 62.

concluding portion of rule 4 of Order LVIII of the R. S. Ct. and the illustration appended to it will set at rest the present question. But the further question how far the appellate Court is *bound* to exercise such power (as was contended in the case under notice) will still remain.

We may also point out that under this new rule, the recent decision of the Calcutta High Court in *Agilul Hosain* v. *Dino Nath Dutt*[1] will not perhaps be good law, having regard to the decision of the Court of Appeal in England in *Attorney-General* v. *Simpson.*[2]

Ganesh *v.* **Vishnu**—I. L. R. 32 B. 37.—It is not very clear whether the learned judges deal with the promissory note in this case as one governed by S. 25, Cl. (3) of the Contract Act or as one given for consideration.

A fresh loan will be sufficient consideration for a promise to repay an old unenforceable debt as well (*Cf. Jakeman* v. *Cook*[3]). Speaking of a discharged bankrupt, *Kelly*. C. B. said : "It is of the greatest consequence to him to get the ordinary necessaries of life, but he has no credit. He says to one of his creditors, if you will supply me with food on credit I will pay you the old debt. Is not that a good consideration ? I think it is." But even in this view, the statement by the learned judges of the law as to undue influence seems to be somewhat narrower than the decision of the Judicial Committee in *Dhanipal Das* v. *Maneshar Bhaksh Sing*[4] would seem to warrant.

Pandhari Nath *v.* **Govind**—I. L. R. 32 B. 59.—There is force in the observations made by Justice *Beaman* in connexion with the decision in *Ganpat Rao* v. *Vaman Rao.*[5] It is admitted that the MITAKSHARA regards the widow's interest in her husband's property somewhat differently from the DAYABHAGA (see *Narasimha* v. *Venkatadri*[6]) and there is an explanation for it. Under the DAYABHAGA, the widow has the use of *all* her husband's property whereas under the MITAKSHARA she takes only the *separate* property of the husband. But the position of the widow under the one system has been assimilated to that under the other. The Hindu law sometimes draws a distinction, though a vague

1. (1907) I. L. R. 34 C. 996.
2. L. R. (1901) 2. Ch. 671.
3. (1878) L. R. 4 Ex. D. 26.
4. (1906) I. L. R. 28 A. 570.
5. (1908) 10 Bom. L. R. at p. 224.
6. (1885) I. L. R. 8 M. at p. 290.

one, between moveables and immoveables in point of powers of disposition over them, and this had a basis in the nature of things. This too has been slowly effaced, and the decision under notice fairly settles for Western India the question left open by the Judicial Committee in *Bhugwandeen* v. *Mynaboyee.*[1]

Sundrabai *v.* **Shivnarayana.**—I. L. R. 32 B. 81.—We fully adopt the remark of *Chandavarkar* J. that to those who are familiar with the usages of joint Hindu families, the proposition laid down by the Madras High Court in *Govindarajulu Narasimham* v. *Devarabhotla Venkatanarasayya*[2] 'must appear startling.' That case has already been noticed and discussed in the pages of this journal (14 M. L. J 179 and 15 M. L. J 211). In the case now under review the learned Judge goes fully into the Sanskrit authorities, and comes to the conclusion that even in the case of males, marriage is one of the obligatory *Samskaras* and is, therefore, an 'unavoidable family purpose' justifying an alienation of joint family property. The passage from the SMRITI CHANDRIKA relied on by the Madras High Court is held (as was suggested in 15 M. L. J. at p. 225) to relate only to the second text from NARADA cited in S. 41 and not to the one cited in S. 40 of the SMRITI CHANDRIKA.

The learned Judge also remarks that the Madras decision 'rests on a misapprehension * * * of the principles underlying, and the practice obtaining in, the joint Hindu family system.' The only observations made in the judgment with reference to this aspect of the question are those on pp. 94, 95. From these, it is not possible to say whether the learned Judge would have upheld the alienation, even if he had not come to the conclusion that 'marriage is obligatory on those who are not competent * * * to lead the austere life of a confirmed celibate or an ascetic ; if they do not marry they become *patita* and forfeit their caste.' In discussing the Madras case it was submitted by us that according to the true view of the joint family and the practice of the community, the marriage of a co-parcener was a legitimate family purpose justifying the alienation of a reasonable portion of the family property, even apart from the question whether it is a *necessary* sacrament. We do not think the obser-

1. (1867) 11 M. I. A 487.

2 (1903) I. L R. 27 M. 206.

vations of Mr. Justice *Chandavarkar* can be regarded as relating to this view of the question.

Somasundaram Chettiar v. Manicka Vasaka Desika Gnana Sambanda Pandara Sannidhi.—I. L. R. 31 M. 60.—While acting under S. 15 of the Charter Act, the learned Judges take care to say that they are not to be understood as holding that S. 622, C. P. C., would not authorise them to interfere as the order of the lower Court was an *interlocutory* one. We wish a more positive pronouncement had been made on the point. It has generally been held that an interlocutory order cannot be revised by the High Court under S. 622 (*In re Nizam of Hyderabad*[1]; *Motilal v. Nana*[2]) and that, not on the ground that a Court of Revision connot interfere with the *discretion* exercised by the lower Court— as would seem to be suggested by *Balamoney* v. *Ramasami Chettiar*[3]—but on the view that an interlocutory order is not a 'case' within the meaning of S. 622—see *Chattar Singh. v. Lekhraj Singh.*[4] There is, however, much force in the remark of Justice *Norris* in *Dhapi* v. *Ram Pershad*[5] that there may be cases where irremediable injury may be done to a party by an interlocutory order and 'unless the words of the section are clear beyond all doubt to the contrary, I cannot believe the Legislature intended such injury to remain without a remedy.'

The exact scope of S. 15 of the Charter Act has never been clearly defined and the observations of the Judicial Committee in *Nilmoni Singh Deo* v. *Taranath Mukerjee*[6] are too laconic to be of much help. We think that between this provision and S. 622, C. P. C., if liberally construed, the High Court ought to be able to give redress in most cases where serious injury would otherwise go unremedied. But one often finds that the extraordinary or revisional powers of the High Court are measured only by the 'length of the Chancellor's foot.'

SUMMARY OF ENGLISH CASES.

Ellis v. Glover & Hobson, Ltd. [1908] 1 K. B. 388 (C. A.)

Mortgaage—Trade fixtures—Hire and purchase agreement—Right of Mortgagee against owner of fixtures—Mortgagor in possession—Mortgagor's covenant with mortgagee not to remove fixtures.

1. (1886) I. L. R. 9 M. 256-257.
2. (1892) I. L. R. 18 B. 35.
3. (1906) I. L. R. 30 M. 230.
4. (1883) I. L. R. 5 A. 293.
5. (1887) I. L. R. 14 C. at p. 780.
6. (1882) I. L. R. 9 C. 295.

By leaving the mortgagor in possession the mortgagee "impliedly authorizes him whilst in possession to hire and bring and fix fixtures necessary for his business, and to agree with their owner that he shall be at liberty to remove them at the end of the time for which they are hired." But "the mortgagee can undoubtedly take possession of the machinery as part of his security, although not paid for, and although put up after the mortgage and although the vendor had no knowledge of the existence of the mortgage." The vendor can be prejudiced by the hire and even by a subsequent mortgage, by the mortgagee taking possession. And the vendor of unpaid fixtures would equally be defeated by a mortgagee, who, though not having entered into possession has taken a covenant from the mortgagor that the latter will not remove any of the things then on the premises or thereafter to be brought there without the written consent of the mortgagee, for in the face of this covenant it will be impossible to imply any such authority in favour of the mortgagor (*i. e.*, authority to give the vendor any permission to remove.)

[*Reynolds* v. *Ashby* & *Son*[1] applied ; *Gough* v. *Wood* & *Co.*[2] distinguished.]

Cremins v. Guest, Keen & Nettlefolds, Ltd.

[1908] 1 K.B. 469 (C.A.)

Workmen's Compensation Act, 1906 (6 *Edw. VII*, *C.* 58) *s.* —1 '*Out of and in the course of his employment'—Meaning of.*

Part of the contract of service of some workmen employed in a colliery being that they could travel free of charge both to and from the colliery in trains provided for them by the colliery company:

Held, that an accident caused by a train to one of them while waiting at one of the platforms fixed in stations for the said trains occurred " out of and in the course of his employment" within the meaning of S. 1 of the Workmen's Compensation Act, so as to entitle his widow to compensation.

In re **John Morris**. [1908] 1 K.B. 473 (C. A.)

Solicitor—Taking security—General lien—Existence of.

" *Prima facie* a solicitor has a lien for his charges upon the papers of his client. The lien may be lost, released or waived

1. (1904) A. C. 466. 2. (1894) 1. Q. B. 713.

in the same way as the liens which other persons possess. The main difference between the case of a solicitor's lien and those of other liens is that where a solicitor takes any security which is in any degree inconsistent with the retention of a lien, it is his duty to give express notice to the client if he intends to retain the lien, and that, should he not do so, his lien will be taken to be abandoned."

Per *Kennedy* L. J. (not dissenting). He, *i.e.*, the solicitor, must in the fast instance inform the client either expressly or by necessary implication of his intention, for a solicitor stands in a fiduciary relation to his client, whereas bankers, inn-keepers, etc., who are also entitled to a lien as against their own constituents, do not stand in such a position.

Norton *v.* Norton. [1908] 1 Ch. 471 (C. A.).

Abuse of process—Stay of proceedings.

The Court has an inherent jurisdiction to stay an action on the ground that it is an abuse of the process of the Court. An action brought under the following circumstances was held to be an abuse of the process of the Court and was stayed. The action was for an account of the moneys subject to a marriage settlement. The 1st defendant and the plaintiff were husband and wife. The other defendants were trustees to the settlement. The settlement was executed in India. The property comprised therein was in India. The husband was in successful practice as a Barrister in India. The other defendants were residents of India, holding appointments in the Civil Service. Though the domicile of the parties was in England, it was contemplated that they should continue to live in India. The plaintiff was for some time living away from her husband in France. There was reason to suspect that she changed her residence merely for the purpose of bringing the action in England. The plaintiff had taken advantage of the temporary presence of the husband and one of the trustees in England to serve the writ on them. The other defendant was still in India. The evidence of the husband was essential to the case. The plaintiff had threatened her husband some time previously with many crushing claims of diverse nature if he did not consent to allow her the same maintenance as she used to be in receipt of in the past. It was clear that the

action was brought in England " not *bona fide* for the purpose of obtaining justice, but for the purpose of harassing and annoying the defendant and of obtaining something to which the plaintiff may not in justice be entitled.

[*Egbert* v. *Short*[1] approved.]

In re **Sidney; Hingeston** *v.* **Sidney.** [1908] 1 Ch. 488 (C.A.)

" *Charitable or Emigration uses* "—*Bequest void.*

A bequest in trust " for such charitable uses or for such emigration uses or partly for such emigration uses " as the trustee should think fit is void. A bequest for emigration purposes falls neither within the first nor the fourth definition of charitable purposes given by Lord Macnaughten in his judgment in *Commissioners for special purposes of Income-tax* v. *Pensel.*[2] The words " emigration uses " do not necessarily imply a charitable bequest for the relief of the poor, nor could they be said to be " for the advancement of objects of public utility." These words must, as observed in *In re Macduff*, [3] be construed strictly.

[Judgment of *Swifen Eady* J.[4] affirmed.]

General Bill Posting Company *v.* **Atkinson.**

[1908] 1 Ch. 537 (C. A.)

Contract of service—Wrongful dismissal—Servant not bound by the undertaking not to trade after termination.

Where a contract for service provided that the servant should hold office subject to a termination on a notice for a given period and the servant was wrongfully discharged without such notice: *Held*, reversing the judgment of *Neville* J., that it was open to the servant to treat the contract as entirely at an end and sue for damages and that he was not bound any longer by the clause in the agreement that he was not to engage in a similar business for a period after the termination of his engagement.

Nugent *v.* **Nugent.** [1908] 1 Ch. 546 (C. A.)

Receiver—Partition—Auction sale by mortgagee outside the action—Purchase by Receiver without Court's sanction—Whether allowable.

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1. (1907) 2 Ch. 205 ; 17 M. L. J. 407.
2. (1891) A. C. 531, 583.
3. (1896) 2 Ch. 451.
4. (1908) 1 Ch. 126 ; 18 M. L. J. 5[illegible]

The defendant in a partition action (himself a part-owner) was appointed Receiver. The property was subject to a mortgage. The mortgagee put up the property to auction in exercise of his power of sale, with the leave of the Court. The defendant (Receiver) without obtaining the leave of the Court purchased it. *Held*—affirming the judgment of *Swifen Eady* J.[1]—that the sale could not be supported. Though in his character as tenant in common the defendant would not have filled a fiduciary position, yet as a receiver he was in a fiduciary position, and as such could not buy or bid for the property without leave of the Court. In dealing with this class of cases the Court does not proceed upon the footing that there has been fraud or improper concealment or any special advantage taken, but it proceeds upon the general rule that in cases of this kind the purchase ought not to be allowed at all, because it is a dangerous thing to allow, as in most cases it is impossible to ascertain whether the Receiver has or has not taken advantage of his position. It is sufficient to show that he has put himself in a position in which his interest and his duty might conflict. It is not necessary to show that he acted contrary to his duty. Whether he did so or not is immaterial.

Mansell *v.* Valley Printing Company. [1908] 1 Ch. 567.

Unpublished picture—Common Law right—Infringement—Innocent publication without permission.

An author of an unpublished literary production or work of art (in this case it was a picture) has an exclusive right to publish or refrain from publishing it as he may please, and any one who publishes it without his consent, however innocently he might have acted in so doing, infringes his legal right and does that which is actionable *per se.* It matters not how the wrong-doer obtained the production which he publishes, whether he took away the author's original material or whether he only copied it or whether some third person copied it and passed the copy to him. This right is a common law right analogous to the right of ownership in personal property and distinct from copy-right which is regulated by statutes.

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1. (1907) 2 Ch. 292; 17 M. L.J. 465

In re Glukman: Attorney-General v. Geoffrys.

[1908] 1 Ch. 552 (C. A.)

Executor—No next-of-kin—Executors take the residue.

Where there are no next-of-kin, the undisposed of residue goes to the executors unless a contrary intention appears clearly on the face of the will. It is settled law that such an intention is to be inferred from the gift of a legacy to a sole executor or of equal legacies to all the executors. But this presumption of a contrary intention does not arise when the legacies to the several executors are unequal.

Moore v. Ullcoats Mining Company, Ltd.

[1908] 1 Ch. 575.

Landlord and tenant—Service of writ—Inconsistent claim—No determination of tenancy.

The issue of a writ for possession combined with an inconsistent claim for an injunction to restrain the defendant (lessee) from acting in violation of the terms of the lease is not an unequivocal demand for possession so as to operate as a final election by the landlord to determine the tenancy.

In re Joseph—Pain v. Joseph. [1908] 1 Ch. 599.

Will—Codicil—Substituted legacy—Defeasance clause.

The general rule is that where a legacy is given expressly in addition to or in substitution for, one previously given, it is subject to the same incidents and conditions as attached to the original legacy, though the different quality of the original and substituted legacies might sometimes render the application of the condition or the attaching of the incident more onerous in the case of the substituted legacy.

Bennets & Co. v. Brown. [1908] I.K.B. 490.

Ship—Charter—'Weather working days'—Usual meaning of—Evidence to prove another meaning—Admissibility of.

" 'Weather working days' is a well-known phrase * * * which has grown into common use and is generally understood and has come to have an ordinary meaning as part of the English language * * *viz.*, a day on which the work of discharge or * * loading * * * is not prevented by bad weather. * * * I do not think that it is competent to the charterers * * * to put upon that expression a different meaning which, it is said, the words by custom have obtained at the port of Valparaiso."

Leonis Steamship Company, Ltd. v. Rank, Ltd.

[1098] I.K.B. 499 (C.A.)

Ship—Charter-party—Demurrage—Lay days—When is a ship "ready."

"The true proposition, I think, is that where the charter is to discharge in a named place which is a larger area (port), in some part or in several parts of which the ship can discharge, the lay days commence so soon as the ship-owner has placed the ship at the disposal of the charterer in that named place as a ship ready, so far as she is concerned, to discharge, notwithstanding that the charterer has not named or has been unable owing to the crowded state of the port to name a berth at which in fact the discharge can take place."

[Decision of *Chanell* J.[1] reversed.]

Cairn Line of Steamships, Ltd., v. Corporation of Trinity House. [1908] I.K.B. 528 (C.A.)

Ship—'Deck-cargo'—Liability to duty.

Construing S. 85 of the Merchant Shipping Act 1894 (57 and 58 Vict., C. 60) which provided that duty was payable on the registered tonnage of a ship and also on the space occupied by deck-cargo "*i.e.*, timber, stores or other goods":

Held, that coal intended for the consumption of the ship must be included within the term "other goods' and that the latter expression was not confined to "freight-earning cargo," the object of the section being "to ensure the proper amount of the dues based on ship's carrying capacity."

Anglo-Amercian Oil Company, Ltd. v. Manning.

[1908] I. K. B. 536.

Employer and servant—Use of false measure by servant for his own ends without knowledge of employer—Employer's non-liability.

Where a servant of a *large* oil company employed for his own gain without the knowledge of his employers and without

1. (1907) I.K.B. 344—17 M.L.J. 99.

being detected even by their careful scrutiny, a false measure in measuring out oil in the houses of the employers' customers:—

Held, that, in considering the criminal liability of the employers for possession for use of false measure, "*mens rea* is not an element in the offence * * * the offence being one which the Legislature has absolutely prohibited even through a servant, though the employer may not in any way be morally culpable" and that "although employers are liable for the torts of their servants in ordinary cases, and for their frauds also when committed in the supposed interests of their employers, yet they are not liable for those frauds when committed not in the interests of the employers, but for the individual purposes of profit of the fraudulent servant." "That principle is well settled in reference to civil liability for torts and, although it is not directly applicable to the present case, we think we are at liberty so far to apply it as to say that, as this fraudulent servant had this fraudulent measure in his own physical possession for his own fraudulent purposes as distinguished from the interests of his employers, his possession must be deemed to be his own possession and not the possession of his employers. We wish to make it quite clear that we are not considering the case where an employee in a shop makes an instrument fraudulent and continues it. We are not treating the present case as in any sense a precedent which will govern any future case of that kind. Feeling this is a very special case we think we are justified in coming to the above conclusion."

Kettlewell *v.* Refuge Assurance Company.

[1908] I. K. B. 545 (C.A.)

Insurance—Fraud of Insurance Agent—Recovery of premia—'Money had and received'—No one is entitled to benefit by the fraud of his agent.

While affirming the decision of the Divisional Court[1] in the above case *Lord Alverstone* C.J. and Sir *Gorrel Barnes*: *held* (1) that in the circumstances of the case there was no consideration in the shape of a risk undertaken by the defendant company (2) that the contract was voidable at plaintiff's option and that the

1. (1907) 2 K. B. 242—*See* 17. M. L. J. 372.

amounts paid could be recovered as 'money had and received' for plaintiff's use.

Lord Alverstone C. J.—" It can be also recovered back as damages of deceit, the measure of damages in such an action being the amount of the premiums paid."

Buckley L. J.—Though the contract was voidable at her option there was consideration in the shape of a risk undertaken by the defendant Company. "Therefore it is impossible for her (plaintiff) to sue for the money as money had and received to her use." Though there was consideration, as the continuance of the contract by weekly payments was procured by the agent's fraud, " the Company cannot take advantage of the fraud of their agent and cannot be allowed to keep the profit as against her."

CROWN CASE RESERVED.

The King *v.* Bartholomew. [1908] 1. K. B. 554.

Highway—Obstruction—Indictable nuisance—What is.

A coffee-stall with permanent water and gas pipe fixtures having been erected in the middle of the highway of a street, and the jury having found that though it was technically an obstruction it did not appreciably interfere with the traffic in the street :

Held, on the facts of the case (1) that the words " traffic in the street " must be taken to include the people and vehicles going and entitled according to law to go along and across the street and (2) that as the finding did not amount to the commission of a 'nuisance' it was not indictable.

Wilson's Music and General Printing Coy. *v.* Finsbury Borough Council. [1908] 1. K. B. 563.

Local authority—Statutory liability to do certain work—Compulsion—Plaintiff doing the work under protest—Right to reimbursement.

The following "is a well recognised principle." " Where a local authority, being liable to do certain work, say in effect to a private person that he must do it, meaning, because the private person is legally liable to do it, and the local authority do not make any express promise to pay for the work if it should turn

out that they were wrong in putting the liability on the private person the law says that as the local authority are putting *pressure* on the individual, a promise will be implied on the part of the local authority to reimburse the private person the cost he has incurred in doing the work for which the local authority were legally liable."

In re Lucas and Chesterfield Gas and Water Board. [1908] 1. K. B. 571.

Land acquisition—Special adaptability for the purpose required—One element to be taken into consideration of compensation.

Where a land is sought to be acquired under powers given under the Land Acquisition Act, the fact of the special adaptability of the land proposed to be taken is an element to be taken into consideration in determining the amount of compensation though it might be (1) that there would be very few persons who would buy it for that purpose and (2) that even those who would so buy would be under a great difficulty in being obliged to obtain special parliamentary sanction for its acquisition.

Bottomby *v.* Brougham. [1908] 1. K. B. 584.

Defamation—Suit for—Judicial Officers' acts—Absolute privilege, what is—Malice.

The report of an Official Receiver disclosing certain frauds in the winding up of a certain Company is in pursuance of his judicial duties and under statutory authorities. The fact that it is made *ex parte* without the person defamed thereby, having been given an opportunity to explain does not take away the privilege. Another view to be taken of a such a report is that it is "the initial stage of proceedings in the winding-up Court which clearly is a Court." "It is the information upon which proceedings take place" just like "information filed by the Attorney-General." Both these persons, though parties to their respective proceedings, are not litigants.

Such a report is absolutely privileged and comes within the rule laid down in *Munster* v. *Lamb*[1] which clothes the statements of judicial officers, advocates and witnesses with absolute privilege.

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1. (1883) 11. Q. B. D. 588.

"Absolute privilege" is not "a very accurate expression.' Calling it a "privilege" is sometimes misleading. Privilege means in the ordinary way, a private right. Now there is no private right of a judge or a witness or an advocate to be malicious. It would be wrong of him, and if it could be proved I am by no means sure that it would not be actionable. The real doctrine of what is called 'absolute privilege' is that in the public interest it is not desirable to enquire whether the words or acts of certain persons are malicious or not. It is not that there is any privilege to be malicious but that, so far as it is a privilege of the individual—I should call it rather a right of the public—the privilege is to be exempt from all enquiry as to malice." So the action brought to question the Official Receive'rs report as malicious is not maintainable in law.

University College of North Wales *v.* Taylor.

[1908] P. 140 (C. A.)

Will—Incorporation of unattested document with will—Parol evidence to apply a description to the unattested document—Admissibility of.

Reversing the judgment[1] of Sir *Gorrel Barnes*, President, the Court of Appeal, where it was sought to incorporate an unattested document with a duly attested will as a part thereof by means of oral evidence as sufficiently answering the description, given in the will, of another document:

Held, that as the reference in the will in the following terms, *viz.*, "to invest and apply the income of such investments as are contained and specified in any memorandum amongst my papers written or signed by me relating thereto" was capable of being construed in respect of any existing or future document, parol evidence was inadmissible.

Cozens-Hardy M. R.—*Quære*:—Whether a will can dispose of property in the following terms: "upon trusts and upon the terms specified in any one existing document unless and until I may alter it by some other document which I may execute at some future time"?

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1. (1907) P. 222—*See* 17 M. L. J. 871.

"The Suevic." [1908] P. 154.

Admiralty—Salvage—Danger to life—Principle of life salvage.

Bucknill J.— "I apprehend that it will be accurate to say that the principle which lies at the bottom of life salvage is that there must, in the first instance, be actual danger to the persons whose lives have been salved or the apprehension of danger, and that seems to me to cover the whole ground. If there is no danger or anything like danger, there is nothing to be saved from."

The Vicar and Church-wardens of Wimbledon *v.* Eden. *In re* St. Mark's Wimbledon

(CHAPEL OF EASE.) [1908] P. 167.

Church—Alteration in holy table—Position of cross and candlesticks.

"Whether the cross is on or just above the holy table, there is no objection to it in point of law. The same principle applies to candlesticks." It is not improper to raise the holy table above the floor of the church.

Anglo-Algerian S. S. Company, Ltd. *v.* Houlder Line, Ltd. [1908] I.K.B. 659.

Negligence of defendant in navigation—Obstruction to passage of a dock—Closing of dock for repair of passage—Detention outside, of plaintiff's vessel entitled to enter dock—Action—Maintainability of—Damage too remote.

Where owing to the negligent navigation of defendant's ship the gates of a dock into which all ships on payment of certain dues were entitled to enter for their own purposes, were damaged, on account of which the dock had to be closed for a time during two and a half days of which the plaintiff's vessel, which having arrived wanted to do business in the dock, was obliged to stay outside:

Held that defendant's negligent navigation was too indirect a cause for plaintiff to sustain a cause of action.

Per Curiam.—" The obligation of the dock company is similar to that of a common carrier who must carry goods offered to him for carriage or of the inkeeper who must receive guests. If by the tortious act of a wrong-doer, the inn is rendered unfit

for the reception of guests, and in consequence of this some person is prevented from obtaining accommodation as a guest at the inn and is thereby put to expense, is there any authority for saying that such a person could recover damages from the wrong-doer? I have been unable to find any. The tortious act in the present case, as in the hypothetical case of an inn, is very different in its relation to the plaintiffs and their loss from the tortious act of obstructing a highway by which a person desiring to use a highway is directly prevented from exercising *his right.*"

In re **P. Macfadyen & Co.** *Ex parte* **Vizianagaram Company, Ltd.** [1908] I.K.B. 675.

Bankruptcy—Firm both in England and in India—Creditors in both places—Jurisdiction of English Court to sanction agreement of trustee in England to cooperate with trustee in India to collect assets and distribute for all.

Where a firm which did business both in England and in India and which had creditors in both places became bankrupt:

Held, that there was nothing in the English Bankruptcy Act to prohibit the English Court from assuming jurisdiction and sanctioning the agreement of the trustee in England to cooperate with the trustee in India for facilitating the realization of the two estates with a view to speedily distribute the same amongst the creditors.

Major Brothers *v.* **Franklin and Son.** [1908] 1 K. B. 712.

Trade mark—Right of salesman on commission to.

" A salesman on commission can in law have a trade mark " though he himself does nothing " to the goods such as selecting or grading " but has all these done through another.

Wilson *v.* **Carnley.** [1908] 1. K. B. 729 (C.A.)

Contract—Promise to marry on death of existing wife—Unenforceability—Public policy.

" A promise made by a married man during the life-time of his wife to marry some other woman, presumably after his wife's

death, because he could not do so in her lifetime" is "unenforceable *at any time*" on grounds of public policy as being "intrinsically immoral" in its nature.

Though all the three Lords Justices of the Court of Appeal decided the question on the ground of public policy, *Vaughan-Williams* L. J. alone (the rest being *Farwell* and *Kennedy* (L. JJ.) dealt with the case independently of plaintiff's knowledge at the time of the promise, of defendant being a married man.

JOTTINGS AND CUTTINGS.

The Judicial Day.—The Lord Chief Justice, in his introduction to the recently issued Return of the sittings of the King's Bench Judges on Circuit, states that the Judges work in London twenty-seven and a half hours a week. A return of their metropolitan labours would show that the number is really considerably less. The tendency to treat Saturday as *a dies non* in the Courts continues to increase, Mr. Justice Lawrance and Mr. Justice Walton being the only two Judges who sat in the King's Bench Courts on Saturday last. But this is not the only direction in which the Judges have shown a disposition to curtail their sittings. It has become the custom in recent years for the Judges to begin work at 11 o'clock instead of 10-30 on Mondays, and every one of the eight Judges who sat in the King's Bench Courts last Monday observed it. The judicial day used to be much longer than it is now, particularly in the Criminal Courts. 'If some of the old judges who were accustomed to sit from 8 in the morning till past midnight were to know of the present sittings from 10-30 A. M. to 4 P. M., would they not think that the lawyers of the present day were a degenerate race?' Sir Harry Poland has asked. At the famous trial of Thomas Hardy for high treason in 1794 the Court sat day by day at 8 o'clock in the morning and continued sitting till past midnight. Sir Harry Poland himself was, he has told us, present at a trial for murder, before Mr. Justice Erle, at the Central Criminal Court in 1847, which lasted from 10 in the morning until 12 at night. The nearest approach to this, as far as the Return goes, is that one day at the Autumn Assize on the North Wales Circuit in 1905 Mr. Justice A. T. Lawrance sat for eleven hours. It is, indeed, one of the defects in the Circuit system that the Judges while

compelled to be idle at some assize towns have to sit abnormally long hours at others. These long hours are inimical to the interests of justice, for they involve a physical and mental strain greater than judge, counsel, or jurymen can properly bear. Nobody desires, now-a-days, that the judges should attempt to rival the Herculean feats of endurance of their predecessors.

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Perplexing legacy.—A young man appeared unduly depressed after the death of a rich aunt. "Why are you so sad?" an acquaintance said to the young man. "You never appeared to care much for your aunt."

"I didn't" said the youth, dolefully; but I was the means of keeping her in an insane asylum the last five years of her life, and now that she has left me all her money I've to go to Court and prove that she was of sound mind."

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Virtue of Obedience a relative one:—Admiral Sigsbee, in a recent after-dinner speech, said of the naval virtue of obedience:— "Yet even obedience may be carried too far. A lawyer, about to go to Court, said to his office boy; If any one calls, say I'll be back at twelve. Then he went to Court. On his return he asked the boy. Any one called?"

"Yes, Sir," the boy answered. Five beggars; they 'll look in again at twelve, Sir."

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A Queer Judge.—Two Vermont lawyers were trying a case before a rural justice and one of them, who represented the defendant, took occasion to cite a Massachusetts case that was on all fours with his contention. His opponent nudged the justice and whispered: "Look out. He is trying to ring in a Massachusetts case on you." The justice pounded on his table and asked to see the book. It was handed to him. He examined it with all the concentrated wisdom of ages in his countenance and returned it saying Mr.——this here Court may not be lawyer but it ain't to be imposed upon that way. That's, Massachusetts case. Judgment for the plaintiff."

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Full faith and credit:—The Census Taker:—"Your name, mum.?"

"I don't know."

"Beg'pardon mum?"

"I've been divorced. At persent my name is Mrs. Jones in this State. In several States it is Miss, Smith, my maiden name, and in three States, it is Mrs. Brown, my first husband's name."

"This your residence, mum?"

"I eat and sleep here, but I have a trunk in a neighbouring State where I am getting a divorce from my present husband."

"Then you are married at present?"

"I am married in Texas, New York, and Massachusetts; divorced in South Dakota, Missouri, Alaska, Oklahoma, and California; a bigamist in three other States, and a single one in eight others."

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In Practice.—Admiring friend: I see that you are now practising law.

Frank Fledgling: No sir, I appear to be practising law, but I am really practising economy.

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He practised Law by Ear:—When Grover Cleveland was practising law in Buffalo one of his friends was a young lazy lawyer who was for ever pestering him with questions about legal points that he could just as well have looked up for himself. Even Cleveland's patience had an end. One day as his friend entered, he remarked:

"There are my books. Help yourself to them. You can look up your own case."

The lazy lawyer stared at him in amazement.

"See here, Grover Cleveland." he said indignantly, "I want you to understand that you and your old books can go to thunder. You know very well that I don't read law. I practise entirely by ear."

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Vacuum Between the Ears.—Chief Baron O'Grady was a humorist of the first water, as the following story will prove. One day a brother Judge, who owed his promotion rather to interest than to brains was boasting to O' Grady of the summary way in which he disposed of matters in his Court.

"I say to the fellows who bother me with foolish arguments that there is no use in wasting my time and their breath for that all their talk only just goes in at one ear and out at the other."

"And no wonder" quietly answered O' Grady, "seeing that there is so little in—between to stop it."

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CONTEMPORARY LEGAL LITERATURE.

In an article on 'The Status of the Automobile' in the *Yale Law Journal* (February), the writer makes the following suggestions :—The safety and pleasure of the general public demand some further restriction upon the activity, not to say lawlessness, of these powerful engines. The most important are :—Their total exclusion from parks and pleasure drives of our large cities during the customary driving hours of each day. Upon the ordinary streets and country roads, the automobile and the horse-drawn carriage may be driven simultaneously. But where pleasure travel is congested, the constant demand upon the carriage to give way to the motors and to receive their dust, smoke and foul odors, practically destroys the pleasure and will ultimately result in driving them out altogether. Unless, therefore, there be some reservation of exclusive rights during certain hours, the doom of the horse for the purposes of pleasure is sealed.

In actions for personal injuries occasioned by illegal speed, the plaintiff should not be denied a recovery upon the ground of his contributory negligence, provided that such negligence may be given in evidence in reduction of damages. In view of the fact that automobiles are often, if not usually, driven at excessive speed, and that a vast majority of the injuries inflicted by them are attributable to this cause, in respect to which the injured party is helpless, a variation in the common law rule which deprives a plaintiff altogether from a recovery in case of his own contributory negligence, appears just and reasonable. In the light of a punishment, too, it would operate as a strong restraint upon that excessive speed which seems such an irresistible attraction to the chauffeur, and causes such an enormous loss of life. The fact that plaintiff's negligence may be shown in mitigation of damages would prevent any practical injustice and in plain cases limit the recovery to a nominal amount.

As automobiles are usually owned by men of wealth, to whom ordinary fines are of no consequence, the fine for excessive speed should not be less than twenty-five dollars, and in case of personal injuries, imprisonment should be compulsory. Where a fine or imprisonment is optional, the temptation to inflict the lighter punishment, or no punishment at all, is so strong that, in serious cases, the option should be taken away entirely.

In the January and March numbers of the *Michigan Law Review*, Mr. Theodore. P. Ion continues his comparison of 'Roman Law and Mahomedan Jurisprudence.' After pointing out the resemblance between the Roman *gens* and the Mahomedan *akila*, and the *clients* and the *moustana*, the author compares the position of slaves in Rome with that under the Mahomedan Law. 'The slaves in the Islamic countries never played a prominent part either in social or state affairs, beinge xclusively used for domestic service. On the contrary the slaves in Rome—whose numbers far exceeded those of the Mahomedans—were not only servants, but teachers, educators, doctors and above all soldiers. The similarity between the juris-consults of Rome and their *responsa prudentium* on the one hand and the Muhamadan muftis and their futwas is next noticed. Dealing with the law of marriage, the writer observes :—

According to the Mahomedan Law, marriage is purely a civil contract. It being assimilated to a contract of sale and purchase, the husband is the purchaser and the wife the vendor. A proposal and acceptance or a declaration and consent are sufficient for the formation of such contract. It is not necessary that the contract should be in writing. The jurists of the Shiah sect hold, however, that the sacramental words prescribed by law are necessary for the validity of a contract of marriage.

A Mahomedan woman (wife) has certain advantages over the Roman in regard to her legal status in the family ; the former continues to enjoy certain of her civil rights. In fact, she can enter into contract, appear in Court, either as plaintiff, defendant, or as witness, and dispose of her property without the consent of her husband.

The Mahomedan divorce, on its side, is as simple as that of Rome of the early epoch, with this difference, that it is only the husband that has the right to dissolve the marriage, the wife

not being allowed to do so, except in some special cases, and that with the intervention of the Magistrate.

Coming next to wills, by the Roman Law a testator should have the legal capacity at the time of the execution of the will. By the law of the XII Tables a Roman citizen could dispose by will of his property, but by the subseqnent legislation an heir was entitled, as it was called, to his *quarta legitima* and by the *Lex Falcidia* it was enacted that a legacy could not exceed three-fourths of the inheritance. The Mahomedan law also prescribes that the testator cannot bequeath more than one-third of his property, and that if it exceeds that limit the bequest is void, unless it is ratified by the heirs.

The Judicial organisation of Mahomedan countries corresponds in some way to the *Judicia extraordinaria* of the Roman Empire.

The conclusion is stated thus :—

"Leaving aside the laws of marriage and divorce * * * a substantial part of the Muslim jurisprudence, namely the law of contracts, is based on the Greco-Roman Law in force for centuries in the eastern countries subsequently conquered by the Arabians. Besides that, various maxims of the Muslim law betray their Roman origin, showing clearly that the Islamic juris-consults borrowed freely from the dicta of their Roman colleagues * * *. The honour of engrafting into the Mahomedan jurisprudence some of the principles of the Roman legislation and generally moulding their legal system according to 'infidel' laws is to be abscribed to the Arabs * *.'

In an article in the *Yale Law Journal* (March) the following rules sum up a discussion as to the effect of part of the consideration for a contract being void, illegal or unenforceable, the other part of the consideration being valid:—

It is difficult to state any rule bearing upon this subject against which some authority may not be cited. But the following rules may be stated, being well supported by authority.

(*a*) Where two or more promises are made, part of which are legal and part illegal (not *mallum in se*) in consideration of a legal promise, he who has made the legal promise may waive those promises which are illegal and enforce those which are legal, provided his part of the contract has been performed, but if his

promise is also executory the contract being bilateral and being partly illegal cannot be enforced by either party thereto.

(*b*) But the contract cannot be enforced in any event by the party who made the illegal promise.

(*c*) If the illegal promise, so connected with a legal promise, is *mallum in se*, or is a promise to perform a criminal act, the whole contract is void and unenforceable by either party thereto.

(*d*) But if the promise, so connected with a valid legal promise, is not illegal, but simply unenforceable, as one falling within the Statute of Frauds, it will not prevent the party who has made a legal promise on the other side, though it be executory, from waiving such unenforceable promise and enforcing the remaining promise.

The *Green Bag* (March) reports an interesting address by the Rt. Hon. James Bryce on the " Conditions and Methods of Law-making " and the *Canadian Law Times and Review* (February) contains a report of another address of his on the ' Influence of National Character and Historical Environment on the development of the Common Law.'

In the course of the first he summed up the practical result of the English system by saying that it secures four things :

(1) A careful study of the subject before a bill is introduced.

(2) A decision by men of long political experience which out of many subjects most need to be dealt with by legislation.

(3) A careful preparation of measures, putting them into the form in which they are most likely to pass. Obviously that may not be always the best form, but there is no use in offering to Parliament something too good for such a world as the world of practical politics everywhere is.

(4) The fixing upon some one of responsibility for dealing with every really urgent question.

BOOK-REVIEWS.

' THE GOVERNMENT OF INDIA.' By *Sir Courtenay Ilbert*, K. C. S. I. Second Edition, 1907. Clarendon Press, Oxford.—Sir Courtenay Ilbert and his work are so well-known in India—to the profession and to students alike—that a new edition of the book hardly requires any introduction. Since its first publication

nearly ten years ago, it has been almost the authoritative guide on all matters relating to the Indian constitution and it will continue so, as long as the statute law relating to India remains in its present amorphous condition. Cases raising any important questions of constitutional law are rare in this country, and in the absence of any noteworthy changes in the statute law either, there is not much of new matter in the Second Edition. The Indian (Foreign jurisdiction) Order in Council, 1902, is set out and discussed in pp. 388, 389. A few leading recent decisions, like *Bell* v. *The Municipal Commissioners of Madras*, *Hemchand Devchand* v. *Azam Sakarlal Chhotamlal*, *Cook* v. *Sprigg*, *Salaman* v. *Secretary of State for India in Council*, *Jehangir M. Cursetji* v. *Secretary of State for India*, etc., are noticed in their appropriate places. Recent administrative changes like the creation of the Lieutenant-Governorship of Eastern Bengal and Assam, and the Chief Commissionership of the N. W. Frontier Province have also been referred to in passing. The documents at the end which have been now omitted had some historical interest, but the book as now got up is more handy than its predecessor.

THE PROVINCIAL INSOLVENCY ACT, 1907 by *T. S. Rajagopala Aiyar*, B.A. B.L., H. C. Vakil, Madras. Price Rs. 1-12-0. Published by S. R. Krishna Row, Madras.—More than one annotated edition of this Act has already appeared in this Presidency. The notes in Mr. Rajagopala Aiyar's book are fairly full; but seeing that the book is primarily intended for the mofussil where English Reports are not often available, it would have been better if the notes had contained some extracts from the leading English cases. The comparative table of the sections of the English and Indian Acts would have been more useful, if at least the principal English Act had been printed as an appendix.

"THE MAGISTRATE'S COURT MANUAL," 1907. BY *P. H. Chatterjee*, B A., of the Bengal Provincial Service. Published by Manick Chandra Ghose, 14, Madan Baral's lane, Bowbazaar, Calcutta: Price Rs. 4-0-0 cloth bound: Rs. 3-8-0 paper bound.—This is a book more for the Magistrate or the would-be Magistrate than for the practitioner. It is replete with miscellaneous information relating to the service. The book begins with an interesting short sketch of the history of the administration of Criminal justice in India. Part I of the book deals with the constitution and powers of the Criminal Courts under the Criminal

Procedure Code. Under this heading the author has also given all the rules relating to the recruitment of the Indian Civil Service and the appointment of Magistrates in different grades of the Provincial Service. The rules relating to local jurisdiction, etc., and transfer are next dealt with. In accordance with his plan of rearranging the sections of the code according to their practical application, the author, in Part II, deals with the principal work of Magisterial Courts, *viz.*, the initiation and conduct of criminal proceedings up to sentence. Part III deals with miscellaneous heads of criminal jurisdiction such as security proceedings, disputes relating to possession of immoveable property, commitment and sanction proceedings, etc. Part IV deals with bail, adjournments, lunatics, etc., and Part V with criminal proceedings against European British subjects. Under each of these heads the corresponding sections of the Criminal Procedure Code are given with brief notes. Numerous circular orders of the Calcutta High Court and administrative orders of the Bengal Government have been set out or referred to. Part VI is purely administrative and deals with registers, returns and inspection. The notes refer to a large number of reported cases ; but we find no index of cases.

Acknowledgments.

We beg to acknowledge receipt of the following publications :—

Workmen's Compensation Cases.	Volume 9	April 1908.
Dictionary Law by West and Neave	3rd Edition	Do.
Supplement to the High Court decisions of India		Do.
Railway Cases by M. Thiruvenkata Chariar		Do.
Allahabad Law Journal for		Do.
American Lawyer		Do.
American Law Review		Do.
Australian Law Times		Do.
Bombay Law Reporter		Do.
Burma Law Reporter		Do.
Calcutta Law Journal		Do.
Calcutta Weekly Notes		Do.
Canada Law Journal		Do.
Canada Law Times		Do.
Hindustan Review		Do.
Central Law Journal		Do.
Chicago Legal News		Do.
Commonwealth Law Review		Do
Criminal Law Journal		Do.
Educational Review		Do.
Harvard Law Review		Do.
Indian Review		Do.
Kathiawar Law Reports		Do.
The Law Journal		Do.
Law Students' Helper		Do.
Law Students' Journal		Do.
Law Notes		Do.
The Lawyer		Do
Green Bag		Do.
Michigan Law Review		Do.
Punjab Law Reporter		Do.